MOHAMED KASSIM v. PUBLIC PROSECUTOR

[A.Cr.J. (Mohamed Azmi J.) March 31, 1981]

[Kuala Lumpur — Federal Territory Criminal Appeal No. 92 of 1980]

Evidence — Corroboration — Charge of corruptly receiving gratification on account of officers of public body — Evidence of accomplice — Failure on part of prosecution to impeach credibility of accomplice — Evidence of complainant uncorroborated — Judge erred in law and in fact — Appeal allowed — Prevention of Corruption Act, 1961, s. 3(a)(ii).

Criminal Law & Procedure — Corruption — Failure of prosecution to establish prima facie case — Uncorroborated evidence of complainant — Appeal allowed.

The appellant in this case was found guilty and convicted under section 3(a)(ii) of the Prevention of Corruption Act, 1961 for corruptly receiving a gratification of $1,500 from one Mohamed Munapil on account of Officers of Public body. The facts revealed that the complainant applied for a PKNS terrace house on January 18, 1979. Later, he told his superior officer, one Bahaldin that he would be guaranteed a PKNS house if he paid $1,500 to one Kassim (the appellant) and the money was for a woman officer of PKNS who was identified as Kanisah. This information was found to be not true and a report was lodged by the complainant on February 7, 1979 and a trap laid. The appellant was arrested on the following day at the complainant's office at the University after he received the trap money of $1,500. According to the complainant's police report it was one Zakaria who informed him to get in touch with the appellant and to hand over $1,500 bribe for the purpose of getting a house.

The appeal was on two grounds: the learned President erred in holding that the prosecution had established a *prima facie* case against the appellant and that the learned President erred in law and in fact in holding that there was independent corroboration of the complainant's evidence.

Held, allowing the appeal: (1) none of the material parts of the complainant's evidence connecting the appellant with the crime was corroborated by Zakaria who was a material witness for the prosecution. This gap in the prosecution case was not considered by the learned President;

(2) the defence ought not to have been called in this case as the prosecution had failed to establish a *prima facie* case;

(3) the only real evidence against the appellant was the acceptance of the trap money at the office of the complainant on February 8, 1979. There was no evidence that the appellant had demanded the money for corrupt purpose except for the uncorroborated evidence of the complainant who was admittedly an accomplice;

(4) even if the complainant's police report had been corroborated by Zakaria, this appeared to be more consistent with cheating by the appellant by falsely misrepresenting to the complainant through Zakaria that the money was for PKNS officers, in particular, for Kanisah, when in fact it was meant for himself;

(5) for a charge under section 3(a)(ii) of the Prevention of Corruption Act, 1961, it is incumbent on the prosecution to prove that the corrupt money was received as gratification on account of officers of a public body, which, in this case, the prosecution had failed to prove;

(6) the conviction should be quashed and sentence set aside.

(Cases cited but not mentioned in judgment: *Public Prosecutor* v. *Datuk Haji Harun bin Haji Idris* [1977] 1 M.L.J. 15; *Deputy Public Prosecutor* v. *Kilbourne* [1973] 1 All E.R. 440).

FEDERAL TERRITORY CRIMINAL APPEAL.

Hashim bin Majid (*R. Rajasingam* with him) for the appellant.

Nik Abdul Rahman bin Nik Mat (Deputy Public Prosecutor) for the respondent.

Mohamed Azmi J. (delivering oral judgment): The appellant was found guilty and convicted under section 3(a)(ii) of the Prevention of Corruption Act, 1961, and the charge against him was as follows:

"That you on February 8, 1979 at about 2.30 p.m. at the workshop University Technology Malaysia, Jalan Gurney, Kuala Lumpur, in Wilayah Persekutuan, did corruptly receive for yourself a gratification, to wit cash $1,500 from one Mohd. Munapil bin Hj. Abd. Rahman, on account of Officers of Public body, to wit, the Perbadanan Kemajuan Negeri Selangor, to do an act in respect of transaction, to wit, to facilitate the said Mohd. Munapil bin Hj. Abd. Rahman to purchase a house from Perbadanan Kemajuan Negeri Selangor and that you thereby committed an offence punishable under section 3(a)(ii) Prevention of Corruption Act, 1961 (Laws of Malaysia Act 57)."

The brief facts of the case as found by the learned President were as follows. In 1979, the complainant (PW8) applied for a PKNS terrace house at 8th mile Ulu Klang, Kuala Lumpur, *vide* his application (Exhibit P2) which he submitted on January 18, 1979. Later, he told his superior officer, Bahaldin bin Hj. Zainal Abidin (PW1), the administrative officer of University Technology Malaysia, that he would be guaranteed a PKNS house if he paid $1,500 to one Kassim (the appellant) and the money was for a woman officer of PKNS who was eventually identified as Kanisah bt. Saabin (PW3). Bahaldin checked this information from his brother who was attached to PKNS and found that it was not true and he apparently advised the complainant to refer the matter to BSN. A report was lodged by complainant on February 7, 1979; and as a result of a trap laid by BSN, the appellant was arrested on the following day at complainant's office at the University after he had received the trap money of $1,500.

In this appeal, there are two grounds in the appellant's petition which merit serious consideration. On the first ground, it was argued that the learned President erred in holding that the prosecution had established a *prima facie* case against the appellant; and on the second ground, it was submitted that the learned President erred in law and in fact in holding that there was independent corroboration of the complainant's evidence.

On the question of corroboration of complainant's evidence, I am of the view having regard to all the evidence and having considered the submission of counsel for the appellant and the Deputy Public Prosecutor that the learned President had failed to direct his mind to the testimony of Zakaria (PW5). It is important to note that the whole episode arose from what Zakaria was purported to have told the complainant. According to the complainant's police report (Exhibit P11) lodged on February 7, 1979, it was Zakaria who informed him to get in touch with the appellant and to hand over $1,500 bribe for the purpose of getting a house. This fact was not corroborated by PW5. In the course of the trial, the prosecution did apply to impeach the credit of PW5 but the application failed and, as such, PW5's credibility stood unimpeached. In his grounds of judgment, the learned President failed to make a finding whether he accepted or rejected the evidence of Zakaria, and such failure had resulted in misdirection in law and

in fact by the learned President on the question of corroboration.

Further, according to the complainant's evidence, when he, Zakaria and BSN officer Ismail (PW9) went to the appellant's house on the evening of February 7, 1979, at the balcony of the house, the appellant was purported to have asked for money, and Zakaria was alleged to have said that if he, the complainant, had the money, it should be handed over to the appellant. This part of the complainant's evidence was also not corroborated by Zakaria. In fact, none of the material part of the complainant's evidence connecting the appellant with the crime was corroborated by Zakaria who was a material witness for the prosecution. This gap in the prosecution case was not considered by the learned President. By refusing to allow the prosecution to impeach Zakaria's credit, the credibility of Zakaria was saved. Yet, before calling for the defence, the learned President did not consider the effect of Zakaria's evidence which did not support the prosecution case. If the learned President had considered the effect of Zakaria's evidence, which destroyed not only the truth of the complainant's police report but also the other material parts of the complainant's evidence, then he would have found that a serious doubt had been created in the prosecution case.

In my view, the defence ought not to have been called in this case as the prosecution had failed to establish a *prima facie* case which, if unrebutted, would warrant a conviction in view of the grave doubt created by Zakaria. Having regard to Zakaria's evidence, the learned President clearly erred in law and in fact when he held that there was independent corroboration of the complainant's evidence.

In his grounds of judgment, the learned President held that the complainant was an accomplice. He also held that the complainant's evidence was corroborated by PW6 and PW9, the two BSN officers. In my view, this is a misdirection in fact and in law, since the truth of the complainant's police report which forms the basis of the prosecution case could only be corroborated by Zakaria. The complainant informed Bahaldin (PW1) what Zakaria had allegedly informed him that he, the complainant, would be guaranteed a PKNS house if he paid $1,500 to the appellant. It was as a result of this, that Bahaldin made enquiries from his brother and found the alleged information given to the complainant to be false, and this led to the lodging of the police report by the complainant on February 7, 1979. Zakaria did not corroborate the complainant's story on this point. There was nothing in Zakaria's evidence to show that he had informed the complainant about the payment of $1,500 to the appellant or to anybody else in return for getting the PKNS house.

According to the complainant, the appellant demanded the sum of $1,500 on the evening of February 7, 1979 at the appellant's house in the presence of Zakaria, a Chinese gentleman, appellant's wife and children and also in the presence of Ismail (PW9) who was a stranger to the appellant. In my view, it is improbable that the appellant would demand for corrupt money in the presence of so many people, including members of his own family and a total stranger. Indeed, in cross-examination, the complainant agreed that one would not ask for bribe in the presence of other people.

Under cross-examination, the complainant also admitted that up to the time he lodged the police report, the appellant never asked him for money. The main evidence connecting the appellant with the crime was the alleged information given by Zakaria to the complainant. As stated earlier on, Zakaria did not say one word in his testimony to support the complainant's allegation.

The only real evidence against the appellant was the acceptance of the trap money at the office of the complainant on February 8, 1979. There was no evidence that the appellant had demanded the money for corrupt purpose except for the uncorroborated evidence of the complainant who was admittedly an accomplice.

It should also be noted that the appellant in this case was charged under section 3(a)(ii) of the Prevention of Corruption Act, 1961 for corruptly receiving for himself a sum of $1,500 as gratification on account of officers of PKNS to facilitate the approval of PKNS house to the complainant. The prosecution evidence disclosed that applications for PKNS houses were processed and approved by PKNS officers, but the sales were done by ballot by the Board. Now, both the appellant and Zakaria who played prominent roles in this case were not employees or agents of PKNS. They were not even known to Kanisah (PW3), the Assistant Housing Manager of PKNS; nor to Encik Mohd. Kassim (PW2), the Housing Manager. Even if the complainant's police report had been corroborated by Zakaria, this case appeared to be more consistent with cheating by the appellant by falsely misrepresenting to the complainant through Zakaria that the money was for PKNS officers, in particular, for Kanisah, when in fact it was meant for himself. For a charge under section 3(a)(ii) of the Act, it is incumbent on the prosecution to prove that the corrupt money was received as gratification on account of officers of a public body. This, the prosecution had failed to prove.

In the circumstances, this appeal should succeed. Accordingly, I allow this appeal, quash the conviction and set aside the sentence of six months' imprisonment.

Appeal allowed.

Conviction quashed and sentence set aside.

Solicitors: *Shook Lin & Bok.*